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SENATE

REPORT
No. 98–24

INTERNATIONAL TRADE AND INVESTMENT ACT

MARCH 14, 1983.—Ordered to be printed

Mr. DOLE, from the Committee on Finance, submitted the following

REPORT

[To accompany S. 144]

The Committee on Finance, to which was referred the bill (S. 144) to amend the Trade Act of 1974 to ensure reciprocal trade opportunities, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass. The Finance Committee amendments are shown in the reported bill with matter proposed to be deleted struck through and the matter to be inserted shown in bold italic type.

I. SUMMARY

The Committee bill would amend Titles I and III of the Trade Act of 1974 by mandating new specific sector negotiating objectives with respect to trade in services, high technology products, and restrictions on foreign direct investment; by giving the President tariff modification authority on certain high technology items; by authorizing the establishment of intergovernmental advisory committees; by requiring the United States Trade Representative to analyze and report on significant barriers to trade in U.S. products and services and restrictions on foreign direct investment by U.S. persons; by clarifying the President's authority to retaliate with respect to any goods or sector, whether or not involved in the act retaliated against and to take action notwithstanding any other delegation of authority to regulatory agencies; by providing the President with the authority to propose "fast track" legislation under the authority of sections 102 and 151 of the Trade Act to carry out the objectives of section 301; by defining the term "commerce" to include foreign direct investment

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with implications for trade in goods and services, thereby permitting the President to retaliate against restrictions on such investment; by statutorily defining the terms "unjustifiable", "unreasonable", and "discriminatory"; by providing for the initiation of section 301 investigations by the USTR; by providing for delays of up to 90 days in the initiation of international consultations required by section 303; and by providing a specific exemption from the requirements of the Freedom of Information Act for information supplied under specified conditions during an investigation under section 301 and restrictions on the use of such information.

II. General Explanation

CURRENT LAW

The President's principle authority to retaliate against foreign unfair trade practices is section 301 of the Trade Act of 1974 (19 U.S.C. 2411). Section 301 was amended by the Trade Agreements Act of 1979 (P.L. 96–39). Two major changes were made. The President's authority was expanded in order that he would have clear authority to pursue U.S. rights under any applicable trade agreements, and time limits were established for the conclusion of section 301 investigations.

Under section 301, as amended, the President is authorized, where appropriate, to use the authority set forth therein to enforce U.S. rights under trade agreements, including the various nontariff agreements negotiated in the Multilateral Trade Negotiating. The law provides a process through which private parties can seek U.S. government action to enforce rights created by these agreements. It requires that consultations be initiated under the dispute settlement procedure of the applicable international agreement, if any. The time requirements set forth in section 301 within which the President must act are also keyed to the dispute settlement procedure in the particular agreement under which the complaint is brought.

The President is also authorized, where appropriate, to use section 301 to respond to any "act, policy, or practice" of a foreign country that is inconsistent with the provisions of or denies benefits to the United States under any trade agreement, or is "unjustifiable," "unreasonable," or "discriminatory" and burdens or restricts United States commerce. All acts, policies, or practices covered under the 1974 Act are covered under section 301, as amended, notwithstanding the deletion of the specific reference to subsidies and access restrictions as unfair acts. Amendments to the 1979 Act also clarified that U.S. "commerce" includes all services associated with international trade and not just those associated with trade in merchandise.

The President's retaliatory authority remained basically unchanged in the 1979 Act. The President is authorized to take any action otherwise within his authority to respond to the foreign unfair actions. He is also authorized to suspend, withdraw, or modify trade agreement concessions or impose duties or other import restrictions or fees on the products or services of the foreign country.

Another change made by the 1979 Act was to provide a procedure through which the public could request from the USTR certain information on foreign trade policies or practices. If such information is

not available, the USTR is required to request it from the relevant foreign government or decline to do so and inform the person making the request in writing of the reasons for refusing.

THE COMMITTEE BILL

The bill approved by the Committee would make the following changes to the Trade Act of 1974:

(1) A new section 104A would be added providing specific negotiating objectives with respect to trade in services, high technology products, and restrictions on foreign direct investment;

(2) Section 135, which sets up a procedure through which trade negotiating advice is received from the private sector, would be amended to authorize the establishment of intergovernmental advisory committees;

(3) A new section 181 would be added requiring annual national trade estimates on significant barriers to the exportation of U.S. goods and services and restrictions on U.S. foreign direct investment, any action taken to eliminate these barriers, and consultations with the Finance and Ways and Means Committees on trade policy priorities to enhance market opportunities;

(4) Section 301 would be amended to provide the President with specific authority to retaliate against any goods or sector, whether or not involved in the act retaliated against and the President would specifically be authorized to retaliate against a good or service notwithstanding authority of regulatory agencies to deal with the same matters;

(5) Section 301 would be amended to authorize the President to retaliate against restrictions on foreign direct investment by U.S. persons with implications for trade in goods and services, or to otherwise carry out the objectives of 301 by proposing "fast track" legislation under the authority of sections 102 and 151 of the Trade Act of 1974;

(6) Section 301 would be amended by statutorily defining the terms "unreasonable", "unjustifiable" and "discriminatory" which currently exist in section 301 but are not defined;

(7) Section 302 would be amended to provide for the self-initiation of section 301 investigations by USTR;

(8) Section 303, which currently provides that international consultations must be initiated on the same date as an investigation is instituted under section 301 would be amended to provide for a delay of up to 90 days before the initiation of consultations; and

(9) Section 305 would be amended to provide for a specific exemption from the Freedom of Information Act for information received during an investigation under section 301 and restrictions on the use of such information.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill sets forth the short title, "the International Trade and Investment Act".

Section 2 sets forth the statement of purposes of the bill. These purposes include the fostering of U.S. economic growth and employment

by expanding competitive U.S. exports through the achievement of commercial opportunities in foreign markets substantially equivalent to those accorded by the United States; improving the ability of the President to identify and analyze barriers to U.S. trade and investment; encouraging the expansion of international trade in services through the negotiation of international agreements; and enhancing the free flow of foreign direct investment through the negotiation of bilateral and multilateral agreements.

Section 3 requires annual national trade estimates on significant barriers to U.S. commerce, reports to Congress on action taken (including but not limited to any action under section 301) on matters identified in the national trade estimates, and administrative provisions related to these estimates. Under present law the Executive Branch has been slow to identify critical problems or to take advantage of trade agreements to enforce United States rights of market access. Formulating national trade estimates is a step in the direction of a more active policy of enforcing United States rights under trade agreements and identifying objectives for future negotiations. Under *subsection* (*a*) the USTR, through the interagency Trade Policy Committee, would be required to identify the acts, policies, and practices which constitute significant barriers to or distortions of U.S. exports of goods or services and U.S. foreign direct investment. In addition to foreign barriers, these could include U.S. export disincentives.

The bill specifies that the USTR shall identify and analyze acts, policies, and practices which restrict or distort foreign direct investment by U.S. persons especially if such investment has implications for trade in goods or services. It is the Committee's intention that the USTR should focus its efforts in the area of trade related investment issues and not on other issues, such as the expropriation of U.S. investments in foreign countries.

The bill also requires the USTR to make an estimate of the trade distorting impact of any act, policy, or practice identified. In making the national trade estimates the USTR is directed to take into account a number of specified factors including the relative impact of the barriers, the availability of relevant information, and the extent to which the barriers are subject to international agreements as well as advice received under the advisory committee process. It is the Committee's intention in using the word "significant" and setting forth these factors among others to be considered that the USTR will proceed against those barriers to the expansion of market opportunities which are most important in terms of U.S. commercial interests and with respect to which there is the greatest likelihood of achieving solutions, particularly within accepted international procedures.

The specific inclusion of the Trade Policy Committee in this process is intended to make clear that the bill in no way serves to reorganize existing agency functions. Rather the structure established under section 242(a) of the Trade Expansion Act of 1962 is to continue to be utilized. While it is the intention of the Committee that the national trade estimates should be as specific as practicable, it is not intended that they serve to prejudge or to prejudice any petitions which have been or may be brought under the dispute settlement process.

Subsection (*b*) requires the USTR to submit the analysis and estimate within one year of the date of enactment of the bill and annually thereafter to the Committees on Ways and Means and Finance. These reports are to include information on any action being taken with respect to the actions which have been identified and analyzed including but not limited to actions under section 301 or international negotiations or consultations. While not requiring that any particular action be taken, the Committee intends that the USTR should consider vigorously utilizing existing authorities and dispute settlement procedures to deal with the identified barriers and distortions. This subsection also requires the USTR to keep the Ways and Means and Finance Committees currently informed on trade policy priorities for the purpose of expanding market opportunities. These consultations are not statutorily tied to the analysis and reporting requirements, but it is the Committee's intention that the required consultations draw heavily on the information and estimates developed during this process. Information contained in national trade estimates may be classified or otherwise not be made public to the extent appropriate to the information contained therein.

In carrying out the requirements of this section, the head of each department or agency of the executive branch of the Government is authorized and directed to furnish to the USTR, or to the appropriate agency upon request, such data, reports, and information as necessary for the USTR to carry out his functions under this section. The authorization for agencies to furnish information to the "appropriate agency" is intended only to maintain existing interagency reporting relationships, such as that of the Federal Reserve with the Department of the Treasury, and is not intended to impair the ultimate transmission of information to the USTR. It is the Committee's intention that this authority should be used by the USTR to request only that information which is reasonably available to the particular agency. It is not intended to be a general grant of authority to require such agencies to gather information. The information may be requested and used to the extent not otherwise inconsistent with law. This specific limitation is intended by the Committee to make clear that information such as that obtained by the Internal Revenue Service is not within the scope of that which could be requested by or released to the USTR. It is also the Committee's intention that information to be made available to the USTR would be provided subject to lawful regulations governing the protection of national security, business confidential, or otherwise privileged information.

Section 4 of the bill makes a number of amendments to Title III of the Trade Act of 1974. Section 301(a) currently provides that action under this section may be taken on a nondiscriminatory basis or solely against the products or services of the foreign country or instrumentality involved. The bill would amend current law to provide that the President may exercise his authority specifically with respect to any goods or sector, on a nondiscriminatory basis or solely against the foreign country or instrumentality involved, and without regard to whether or not such goods or sectors were involved in the act, policy, or practice identified. This change in language is not intended to confer new retaliatory authority on the President; rather it is intended to

clarify the President's existing authority. The use of the word "product" in current law has raised questions as to whether its scope is limited to articles which have undergone some manufacturing or transforming process. The use of the word "goods" is intended to clarify that the President would have the authority to retaliate against any article whether or not it had undergone processing. Similarly the change from the word "service" to "sector" is intended to clarify that the President, in acting under section 301, could exercise his powers with respect to services offered by foreign countries or foreign nationals as well as with respect to foreign direct investment in the United States either under legislation proposed under the "fast track" authority which would be established or any other independent grant of authority. At present such authority appears to be limited to the Mineral Lands Leasing Act of 1920 (30 USC 181) and section 48 of the Internal Revenue Code.

Section 301(b) currently authorizes the President to retaliate (1) by modifying trade agreement concessions and (2) by imposing duties or other import restrictions on the products of, or fees or restrictions on the services of a foreign country. The bill would make the conforming changes of the word "goods" for the word "products" and would insert the phrase "notwithstanding any other provision of law" before the word "impose". This amendment is intended to clarify the President's existing authority to impose restrictions notwithstanding the authority of an independent agency. While the authority of the President under section 301 is broad, the Committee does intend it be used purdently. It may appropriately be used to impose restrictions on services previously licensed by an independent agency or by denying the grant of such a license, but the Committee does not anticipate the authority would be used to override U.S. treaty obligations.

The bill would also amend section 301(b) by adding a new subsection (3) authorizing the President to propose "fast track" legislation under the procedures of sections 102 and 151 of the Trade Act of 1974 to carry out the objectives of section 301 where additional retaliatory authority may be necessary. Since the definition of "commerce" in section 301(d) would also be amended to include foreign direct investment by U.S. person with implications for trade in [16] good or services", this would permit the President to propose "fast track" legislation providing for retaliation against, or designed to encourage the elimination of, restrictions on U.S. foreign direct investment. The Committee does not intend that the authority to propose "fast track" legislation in any way restrict the President's authority to propose legislation under nonfast track procedures. The choice of whether or not to utilize the "fast track" would be solely within the President's discretion. Under the bill all the requirements for "fast track" legislation set forth in sections 102 and 151 would be applicable, including 90 days consultation with the cognizant committees prior to submitting such legislation.

Section 301(d) currently contains a definition of the term "commerce". As set forth above, the bill would amend subsection (d) by amending the term "commerce" to include foreign direct investment by U.S. persons with implications for trade in goods and services. It is not the Committee's understanding, however, that this language

would preclude the USTR, where appropriate, from conducting an investigation on portfolio investments. It would also include in that subsection definitions of the terms "unreasonable", "unjustifiable", and "discriminatory", which currently exist in section 301 but are not statutorily defined. The definitions of these three terms are not intended to expand the scope of the President's authority with respect to the types of acts against which he can retaliate, other than with respect to foreign direct investment as notfied above. It is the Committee's intention that the definitions clarify existing law and give emphasis to the President's authority to retaliate against certain types of acts, policies, and practices.

The term "unreasonable" is defined as any act, policy, or practice which, while not necessarily in violation of or inconsistent with the international legal rights of the United States, is otherwise deemed to be unfair and inequitable. The term includes, but is not limited to, a denial of fair and equitable market opportunities, opportunities for the establishment of an enterprise, or provision of adequate protection of intellectual property rights. The phrase "fair and equitable" is not defined, since it remains within the President's discretion to determine when circumstances exist which require action under this provision. The Committee believes the President will take into account a broad range of factors in making his determination as to when to proceed, but by including a specific noninclusive list in the bill wishes to emphasize that certain acts, policies and practices which are not necessarily in violation of specific international agreements are becoming increasingly harmful to U.S. interests and should be dealt with accordingly.

Among these acts are investment distorting practices. Performance requirements and other restrictions not impair or distort the free flow of capital and inhibit U.S. firms from establishing themselves and operating abroad are increasingly adversely affecting U.S. trade interests. The Committee has also received testimony and information concerning increasingly frequent problems regarding the denial of adequate portion by foreign countries of U.S. intellectual property rights." The term is intended to be understood in the broadest sense and shall term is intended to be understood in the broadest sense and shall include patents, trade marks, trade names, copyrights, and trade secrets. Some of the problems concerning intellectual property rights involve broad areas of invention not subject to patent coverage in foreign countries, such as chemical products; unreasonable forced licensing and forfeiture provisions for patents; unduly short patent rights involving the inability to enjoin infringemet; very low or token fines where infringement is proved. protracted delay of proceedings with no interim relief available to the patent holder; and practically impossible burdens of proof of process infringement placed on patent holder, and the like.

The Committee believes that in determining whether adequate protection is being provided for such rights the President should consider the scope and degree of protection of the foreign country's laws and procedures. A key factor in the USTR's determination of whether to initiate a section 301 petition should be a consideration of the appropriate legal action available to, or taken by, the aggrieved United

States party to defend its rights in the subject country. The Committee expects, however, that if the U.S. Trade Representative determines not to initiate a section 301 petition, due to pending action by a foreign country's judiciary, action on the petition should be postponed only for a reasonable period of time.

The term "unjustifiable" is defined asan y act, policy, or practice which is in violation of or inconsistent with the international legal rights of the United States, including but not limited to a denal of national or most-favored-nation treatment, the right of establishment or a denial of protection of intellectual property rights. It is the belief of the Committee that this definition conforms with existing law and legislative history and is not an expansion of the category of unjustifiable actions against which retaliation can be taken. The definition continues to address actions by a foreign government that are inconsistent with U.S. international legal rights.

The term "discriminatory" is defined as including where appropriate any act, policy, or practice which denies national or most-favored-nation treatment to U.S. goods, services, or investment. The phrase "where appropriate" has been included in the definition only to take into account those situations in which a denial of national or most-favored-nation treatment, for example in the case of a GATT-compatible customs union, is not an appropriate basis for action.

The bill amends section 302 of the Trade Act by authorizing the USTR to self-initiate investigations under section 301. According to testimony received by the Committee, in many cases U.S. exporters adversely affected by foreign practices inconsistent with U.S. trade agreement rights do not petition for assistance under section 301 for legitimate reasons, such as lack of information or a fear of retaliation. Therefore a vigorous policy of self-initiation is necessary to preserve U.S. market access. Under current law, the President is authorized to take action either as a result of petition-initiated investigation or, on his own motion, but the USTR is not authorized to initiate investigations to provide a foundation which advice could be provided to the President. While providing authority for the USTR to initiate investigations, the bill provides that a decision to do so could only be taken after consultation with appropriate committees established under section 135. Under the bill if the USTR determines to initiate this determination is to be published in the Federal Register and treated as if an affirmation on a petition had been made on the same date. This provision is intended to bring into play all the provisions applicable to cases initiated by petition.

It is anticipated that USTR initiated cases would be the result of careful study, usually accomplished by national trade estimates, as well as careful coordination with statutory advisory committees. This process should, overall, result in a more coherent, aggressive, trade policy.

The bill would amend section 302 to require that a summary of the petition on the basis of which an investigation is instituted, rather than the petition itself, be published in the Federal Register. Copies of the documents would be provided at cost. The publication of entire petitions in the Federal Register has become an increasingly costly undertaking. The Committee believes that publication of a summary together with the availability of the documents at reproduction cost

will save money and at the same time provide the public with adequate notice and information with respect to cases which are instituted.

Section 303 of the Trade Act currently provides that on the date an affirmative determination is made to institute an investigation under section 301 the USTR must request consultations with the foreign country concerned regarding the issues raised in the petition. The administration has testified that the requirement of simultaneous initiation and requests for consultations has caused problems in several cases in which the petitions on which investigations are initiated did not provide an adequate basis for proceeding internationally. The bill would amend section 303 to provide USTR with the authority to delay for up to 90 days any request for consultations for the purpose of verifying or improving the petition to insure an adequate basis for consultation. The bill would also require the USTR to publish notice of the delay in the Federal Register and report to Congress on the reasons for such delay in the report currently required under section 306. It is the belief of the Committee that this authority should be used only in the unusual circumstances described and that the USTR should continue to make every effort to conclude section 301 actions within the prescribed normal time limits.

The bill reported by the Committee would also amend section 305 by adding a new subsection with respect to the treatment of confidential business information. The administration has testified that many U.S. firms or groups are reluctant to petition for investigations under section 301 because of their concern that confidential business information which they might provide during the course of the proceeding might be subject to disclosure or that they will be subject to retaliatory actions in the offending country. The bill provides a specific exception from the Freedom of Information Act for business confidential information requested and received by the USTR in aid of any investigation under Chapter 1 of Title III of the Trade Act and provides that such information shall not be made available if submitted under the circumstances set forth therein. The bill further provides the USTR with authority to prescribe regulations concerning provision of nonconfidential summaries of such information in order to give USTR the necessary flexibility in dealing with foreign countries or instrumentalities which provide such information but cannot be compelled to provide summaries. The bill also authorizes the USTR to use the information or make it available to an employee of the Federal Government for use in a section 301 investigation but requires that it be made available to any other person only in a form in which it cannot be associated with the source of the information. The Committee believes that by protecting confidential information and its source these provisions will encourage and facilitate the filing of legitimate petitions under section 301, as well as encouraging and supporting self-initiated investigations.

Section 5 of the bill would amend Chapter 1 of title I of the Trade Act by adding a new section 104A providing specific negotiating objectives with respect to international trade in services and investment and high technology products. Under the provisions of the bill principal U.S. negotiating objectives with respect to trade in services would be the reduction or elimination of barriers to or distortions of

international trade in services and the development of internationally agreed rules, including dispute settlement procedures, to reduce or to eliminate such barriers. The terms "services" and "services associated with international trade" have not been defined. The committee was concerned that any definition would be limiting. The intent of the committee is that "services" and, for purposes of section 301 "services associated with international trade" be defined as broadly as possible.

Similarly the bill sets forth as negotiating objectives with respect to foreign direct investment, the reduction or elimination of artificial or trade distorting barriers, the development of rules, including dispute settlement procedures, to ensure the free flow of foreign direct investment, and the reduction or elimination of the trade distortive effects of certain investment-related trade measures.

The bill also provides U.S. negotiating objectives with respect to high technology products. Among these are to obtain and to preserve the maximum openness of trade and investment in high technology products and related services; to obtain the elimination or reduction of, or compensation for, the significantly distorting effects of foreign government actions which affect trade in high technology products identified in the studies which would be required under section 181; to obtain commitments that the official policy of foreign governments or instrumentalities will not discourage government or private procurement of foreign high technology products; to obtain the reduction or elimination of all tariffs and barriers on U.S. exports of high technology products particularly key commodity products (a term the committee uses to identify standardized products sold in substantial quantities throughout the world such as the 64,000 random access memory electronic silicon chip); to obtain commitments to foster national treatment; to obtain commitments to foster pursuit of joint scientific cooperation and to ensure that access to the results of cooperative efforts should not be impaired; and to provide minimum safeguards for the acquisition and enforcement of intellectual property rights and the property value of proprietary data.

Section 6 of the bill contains additional provisions with respect to trade in services. *Subsection (a)* provides that the USTR, through the interagency Trade Policy Committee, shall develop and coordinate U.S. policies concerning trade in services and that each department or agency responsible for the regulation of a service industry shall advise and work with the USTR concerning matters that have come to the department's or agency's attention with respect to the treatment of U.S. service sector interests in foreign markets or allegations of unfair practices by foreign governments or companies in a service sector. The committee intends that the existing trade policy structure be utilized to develop and coordinate policies concerning trade in services but has specified that these efforts be carried out in conformance with existing provisions of law in order to ensure that no authority granted under this section be construed as altering the existing authority of any agency or department with respect to any specific service sector.

Subsection (b) would establish in the Department of Commerce a service industry development program. *Subsection (c)* provides that it is the policy of the Congress that the President shall, as he deems

appropriate, consult with state governments on issues of trade policy affecting them. It also authorizes the President to establish one or more intergovernmental policy advisory committees under the structure and procedures established in Section 135 of the Trade Act. It is the committee's intention that these intergovernmental advisory committees be established and utilized only in the areas, like insurance or procurement, where the states have particular interests and not across the broad spectrum of trade issues.

Section 7 of the bill would amend section 102 of the Trade Act by defining the term "international trade" to include foreign direct investment by United States persons, especially if such investment has implications for trade in goods and services. This change would provide the President with specific authority to negotiate with respect to barriers on such foreign direct investment.

Section 8 of the bill would provide the President with authority to enter into bilateral or multilateral agreements as may be necessary to achieve the objectives of this section and those set forth in the proposed section 104A(c) concerning high technology products. *Subsection (b)* would provide the President with a five-year authority to eliminate the duties on specified items within six item numbers of the Tariff Schedules of the United States in order to carry out any agreement concluded as a result of the negotiating objectives under the proposed section 104A.

III. Vote of the Committee

In compliance with section 133 of the Legislative Reorganization Act of 1946, the committee states that the bill was ordered favorably reported without objection.

IV. Budgetary Impact of the Bill

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the costs to be incurred in carrying out the bill and the effect on revenues of the bill. The committee does not expect any immediate impact on revenues from the tariff reducing authority provided in the bill. It is expected that the negotiations authorized by the bill will not be completed for some time. If the full authority were used to eliminate duties on the seven specified items the committee estimates there could be a possible loss of customs revenues of between $400 million and $500 million dollars by 1987.

V. Regulatory Impact of the Bill

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee states that the provisions of the committee bill will not regulate any individuals or businesses, will not impact on the personal privacy of individuals, and will result in no additional paperwork.

VI. Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the changes in existing law made by the bill as reported are shown below (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Public Law 93-618, 93rd Congress, H.R. 10710, January 3, 1975

AN ACT To promote the development of an open, nondiscriminatory, and fair world economic system, to stimulate fair and free competition between the United States and foreign nations, to foster the economic growth of, and full employment in, the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Trade Act of 1974".

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THE TRADE ACT OF 1974

TITLE I—NEGOTIATING AND OTHER AUTHORITY

CHAPTER 1—RATES OF DUTY AND OTHER TRADE BARRIERS

SEC. 102. NONTARIFF BARRIERS TO AND OTHER DISTORTIONS OF TRADE.

* * * * * * *

(g) For purposes of this section—

(1) the term "barrier" includes the American selling price basis of customs evaluation as defined in section 402 or 402a of the Tariff Act of 1930, as appropriate;

(2) the term "distortion" includes a subsidy; and

[(3) the term "international trade" includes trade in both goods and services.]

(3) the term "international trade" includes—

(A) trade in both goods and services, and

(B) foreign direct investment by United States persons, especially if such investment has implications for trade in goods and services.

SEC. 104. SECTOR NEGOTIATING OBJECTIVE.

(a) A principal United States negotiating objective under sections 101 and 102 shall be to obtain, to the maximum extent feasible, with respect to appropriate product sectors of manufacturing, and with respect to the agricultural sector, competitive opportunities for United States exports to the developed countries of the world equivalent to the competitive opportunities afforded in United States markets to the importation of like or similar products, taking into account all barriers (including tariffs) to and other distortions of international trade affecting that sector.

(b) As a means of achieving the negotiating objective set forth in subsection (a), to the extent consistent with the objective of maximizing overall economic benefit to the United States (through maintaining and enlarging foreign markets for products of United States agriculture, industry, mining, and commerce, through the development of fair and equitable market opportunities, and through open and nondiscriminatory world trade), negotiations shall, to the extent feasible be conducted on the basis of appropriate product sectors of manufacturing.

(c) For the purposes of this section and section 135, the Special Representative for Trade Negotiations together with the Secretary of Commerce, Agriculture, or Labor, as appropriate, shall, after consultation with the Advisory Committee for Trade Negotiations established under section 135 and after consultation with interested private *or non-Federal governmental* organizations, identify appropriate product sectors of manufacturing.

(d) If the President determines that competitive opportunities in one or more product sectors will be significantly affected by a trade agreement concluded under section 101 or 102, he shall submit to the Congress with each such agreement an analysis of the extent to which the negotiating objective set forth in subsection (a) is achieved by such agreement in each product sector or product sectors.

SEC. 104A. NEGOTIATING OBJECTIVE S WITH RESPECT TO TRADE IN SERVICES, FOREIGN DIRECT INVESTMENT, AND HIGH TECHNOLOGY PRODUCTS.

(a) TRADE IN SERVICES.—Principal United States negotiating objectives under section 102 shall be—

(1) to reduce or to eliminate barriers to, or other distortions of, international trade in services (particularly United States service sector trade in foreign markets), including barriers that deny na-

tional treatment and the rights of establishment and operation in such markets; and

(2) to develop internationally agreed rules, including dispute settlement procedures, which—

(A) are consistent with the commercial policies of the United States, and

(B) will reduce or eliminate such barriers or distortions and help insure open international trade in services.

(b) FOREIGN DIRECT INVESTMENT.—Principal United States negotiating objectives under section 102 shall be—

(1) to reduce or to eliminate artificial or trade-distorting barriers to foreign direct investment, to expand the principle of national treatment, and to reduce unreasonable barriers to establishment; and

(2) to develop internationally agreed rules including dispute settlement procedures, which—

(A) will help ensure a free flow of foreign direct investment, and

(B) will reduce or eliminate the trade distortive effects of certain investment related measures.

(c) HIGH TECHNOLOGY PRODUCTS.—Principal United States negotiating objectives shall be—

(1) to obtain and preserve the maximum openness with respect to international trade and investment in high technology products and related services;

(2) to obtain the elimination or reduction of, or compensation for, the significantly distorting effects of, foreign government acts, policies, or practices identified in section 181, with particular consideration given to the nature and extent of foreign government intervention affecting United States exports of high technology products or investments in high technology industries, including—

(A) foreign industrial policies which distort international trade or investment;

(B) measures which deny national treatment or otherwise discriminate in favor of domestic high technology industries;

(C) measures which impair access to domestic markets for key commodity products; and

(D) measures which facilitate or encourage anticompetitive market practices or structures;

(3) to obtain commitments that official policy of foreign countries or instrumentalities will not discourage government or private procurement of foreign high technology products and related services;

(4) to obtain the reduction or elimination of all tariffs on, and other barriers to, United States exports of high technology products and related services;

(5) to obtain commitments to foster national treatment; and

(6) to obtain commitments to—

(A) foster the pursuit of joint scientific cooperation between companies, institutions or governmental entities of the

United States and those of the trading partners of the United States in areas of mutual interest through such measures as financial participation and technical and personnel exchanges, and

(B) insure that access by all participants to the results of any such cooperative efforts should not be impaired; and

(7) to provide effective minimum safeguards for the acquisition and enforcement of intellectual property rights and the property value of proprietary data."; and

(d) DEFINITION OF BARRIERS AND OTHER DISTORTIONS.—For purposes of subsection (a), the term "barriers to, or other distortions of, international trade in services" includes, but is not limited to—

(1) barriers to the right of establishment in foreign markets, and

(2) restrictions on the operations of enterprises in foreign markets, including—

(A) direct or indirect restrictions on the transfer of information into, or out of, the country or instrumentality concerned, and

(B) restrictions on the use of data processing facilities within or outside of such country or instrumentality.

CHAPTER 2—OTHER AUTHORITY

SEC. 128. MODIFICATION AND CONTINUANCE OF TREATMENT WITH RESPECT TO DUTIES ON HIGH TECHNOLOGY PRODUCTS.

(a) In order to carry out any agreement concluded as a result of the negotiating objectives under section 104A(c), the President may proclaim, subject to the provisions of chapter 3—

(1) such modification, elimination, or continuance of any existing duty, duty-free, or excise treatment, or

(2) such additional duties,

as he deems appropriate.

(b) The President shall exercise his authority under subsection (a) only with respect to the following items listed in the Tariff Schedules of the United States (19 U.S.C. 1202):

(1) Accounting, computing, and other data processing machines provided for in item 676.15.

(2) Data processing machines provided for in item 676.30.

(3) Parts of automatic data processing machines (and units thereof) provided for in item 676.52.

(4) Transistors provided for in item 687.70.

(5) Monolithic integrated circuits provided for in item 687.74.

(6) Integrated circuits provided for in item 687.77.

(7) Electronic components provided for in item 687.81.

(c) Termination.—The President may exercise his authority under this section only during the 5-year period beginning on the date of the enactment of the Reciprocal Trade and Investment Act of 1982.

CHAPTER 3—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

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SEC. 135. ADVICE FROM PRIVATE *OR PUBLIC* SECTOR.

(a) The President, in accordance with the provisions of this section, shall seek information and advice from representative elements of the private sector *and the non-Federal governmental sector* with respect to negotiating objectives and bargaining positions before entering into a trade agreement referred to in section 101 or 102.

(b)(1) The President shall establish an Advisory Committee for Trade Negotiations to provide overall policy advice on any trade agreement referred to in section 101 or 102. The Committee shall be composed of not more than 45 individuals, and shall include representatives of government, labor, industry, agriculture, small business, service industries, retailers, consumer interests, and the general public.

(2) The Committee shall meet at the call of the Special Representative for Trade Negotiations, who shall be the Chairman. The Committee shall terminate upon submission of its report required under subsection (e)(2). Members of the Committee shall be appointed by the President for a period of 2 years and may be reappointed for one or more additional periods.

(3) The Special Representative for Trade Negotiations shall make available to the Committee such staff, information, personnel, and administrative services and assistance as it may reasonably require to carry out its activities.

(c)(1) The President may, on his own initiative or at the request of organizations representing industry, labor, or agriculture, establish general policy advisory committees for industry, labor, and agriculture, respectively, to provide general policy advice on any trade agreement referred to in section 101 or 102. Such committees shall, insofar as practicable, be representative of all industry, labor, or agricultural interests (including small business interests), respectively, and shall be organized by the President acting through the Special Representative for Trade Negotiations and the Secretaries of Commerce, Labor, and Agriculture, as appropriate.

(2) The President shall, on his own initiative or at the request of organizations in a particular sector, establish such industry, labor, or agricultural sector advisory committees as he determines to be necessary for any trade negotiations referred to in section 101 or 102. Such committees shall, so far as practicable, be representative of all industry, labor, or agricultural interests including small business interests in the sector concerned. In organizing such committees the President, acting through the Special Representative for Trade Negotiations and the Secretary of Commerce, Labor, or Agriculture, as appropriate, (A) shall consult with interested private organizations, and (B) shall take into account such factors as patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade, the character of the nontariff barriers and other distortions affecting such competition,

the necessity for reasonable limits on the number of such product sector advisory committees, the necessity that each committee be reasonably limited in size, and that the product lines covered by each committee be reasonably related.

(3) The President—

(A) may establish policy advisory committees representing non-Federal governmental interests to provide, where the President finds it necessary policy advice (i) policy advice on matters referred to in subsection (a); and (ii) to provide policy advice with respect to implementation of trade agreements, and

(B) shall include as members of committees established under paragraph (2) representatives of non-Federal governmental interests where he finds such inclusion appropriate after consultation by the Trade Representative with such representatives.

(g) (1) (A) Trade secrets and commercial or financial information which is privileged or confidential, submitted in confidence by the private *or non-Federal government* sector to officers or employees of the United States in connection with trade negotiations, shall not be disclosed to any person other than to—

(i) officers and employees of the United States designated by the Special Representative for Trade Negotiations, and

(ii) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are accredited as official advisers under section 161 (a) or are designated by the chairman of either such committee under section 161 (b) (2), and members of the staff of either such committee designated by the chairman under section 161 (b) (2),

for use in connection with negotiation of a trade agreement referred to in section 101 or 102.

(B) Information, other than that described in paragraph (A), and advice submitted in confidence by the private *or non-Federal government* sector to officers or employees of the United States, to the Advisory Committee for Trade Negotiations or to any advisory committee established under subsection (c), in connection with trade negotiations, shall not be disclosed to any person other than—

(i) the individuals described in subparagraph (A), and

(ii) the appropriate advisory committees established under this section.

(2) Information submitted in confidence by officers or employees of the United States to the Advisory Committee for Trade Negotiations, or to any advisory committee established under subsection (c), shall not be disclosed other than in accordance with rules issued by the Special Representative for Trade Negotiations and the Secretary of Commerce, Labor or Agriculture, as appropriate, after consultation with the relevant advisory committees established under subsection (c). Such rules shall define the categories of information which require restricted or confidential handling by such committee considering the extent to which public disclosure of such information can reasonably be expected to prejudice United States negotiating objectives. Such rules shall, to the maximum extent feasible, permit meaningful

consultations by advisory committee members with persons affected by proposed trade agreements.

(h) The Special Representative for Trade Negotiations, and the Secretary of Commerce, Labor, or Agriculture, as appropriate, shall provide such staff, information, personnel, and administrative services and assistance to advisory committees established pursuant to subsection (c) as such committees may reasonably require to carry out their activities.

(i) It shall be the responsibility of the Special Representative for Trade Negotiations, in conjunction with the Secretary of Commerce, Labor, or Agriculture, as appropriate, to adopt procedures for consultation with and obtaining information and advice from the advisory committees established pursuant to subsection (c) on a continuing and timely basis, both during preparation for negotiations and actual negotiations. Such consultation shall include the provision of information to each advisory committee as to (1) significant issues and developments arising in preparation for or in the course of such negotiations, and (2) overall negotiating objectives and positions of the United States and other parties to the negotiations. The Special Representative for Trade Negotiations shall not be bound by the advice or recommendations of such advisory committees but the Special Representative for Trade Negotiations shall inform the advisory committees of failures to accept such advice or recommendations, and the President shall include in his statement to the Congress, required by section 163, a report by the Special Representative for Trade Negotiations on consultation with such committees, issues involved in such consultation, and the reasons for not accepting advice or recommendations.

(j) In addition to any advisory committee established pursuant to this section, the President shall provide adequate, timely and continuing opportunity for the submission on an informal and, if such information is submitted under the provisions of subsection (g), confidential basis by private *or non-Federal government* organizations or groups, representing *government*, labor, industry, agriculture, small business, service industries, consumer interests, and others, of statistics, data, and other trade information, as well as policy recommendations, pertinent to the negotiation of any trade agreement referred to in section 101 or 102.

Advisory committees established by Department of Agriculture

(l) The provisions of title XVIII of the Food and Agriculture Act of 1977 shall not apply to an advisory committee established under subsection (c) of this section.

(*m*) *Non-Federal Government Defined.—The term "non-Federal government" means—*

(1) any State, territory or possession of the United States, or the District of Columbia, or any political subdivision thereof, or

(2) any agency or instrumentality of any entity described in paragraph (1).

CHAPTER 4—OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

SEC. 141. OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

* * * * * * *

(d) The Special Representative for Trade Negotiations may, for the purpose of carrying out his functions under this section—

(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)); [and]

(7) adopt an official seal, which shall be judicially noticed[.]; *and*

(8) provide, where authorized by law, copies of documents to persons at cost, except that any funds so received shall be credited to, and be available for use from, the account from which exepnditures relating thereto were made.

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CHAPTER 8—BARRIERS TO MARKET ACCESS

SEC. 181. ACTIONS CONCERNING BARRIERS TO MARKET ACCESS

(a) NATIONAL TRADE ESTIMATES.—

(1) In general.—Not later than the date on which the initial report is required under subsection (b)(1), the United States Trade Representative, through the interagency trade organization established pursuant to section 242(a) of the Trade Expansion Act of 1962, shall—

(A) identify and analyze acts, policies, or practices which constitute significant barriers to, or distortions of—

(i) United States exports of goods or services, and

(ii) foreign direct investment by United States persons, especially if such investment has implications for trade in goods or services; and

(B) make an estimate of the trade-distorting impact on United States commerce of any act, policy, or practice identified under subparagraph (A).

(2) Certain factors taken into account in making analysis and estimate.—In making any analysis or estimate under paragraph (1), the Trade Representative shall take into account—

(A) the relative impact of the act, policy, or practice on United States commerce;

(B) the availability of information to document prices, market shares, and other matters necessary to demonstrate the effects of the act, policy, or practice;

(C) the extent to which such act, policy, or practice is subject to international agreements to which the United States is a party; and

(D) any advice given through appropriate committees established pursuant to section 135.

(3) Annual revisions and updates.—The Trade Representative shall annually revise and update the analysis and estimate under paragraph (1).

(b) REPORT TO CONGRESS.—

(1) IN GENERAL.—On or before the date which is one year after the date of the enactment of the Reciprocal Trade and Investment Act of 1982, and each year thereafter, the Trade Representative shall submit the analysis and estimate under subsection (a) to the Committee on Finance of the Senate and to the Committee on Ways and Means of the House of Representatives.

(2) REPORTS TO INCLUDE INFORMATION WITH RESPECT TO ACTION BEING TAKEN.—The Trade Representative shall include in each report submitted under paragraph (1) information with respect to any action taken to eliminate any act, policy, or practice identified under subsection (a), including, but not limited to—

(A) any action under section 301, or

(B) negotiations or consultations with foreign governments.

(3) CONSULTATION WITH CONGRESS ON TRADE POLICY PRIORITIES.—The Trade Representative shall keep the committees described in paragraph (1) currently informed with respect to trade policy priorities for the purposes of expanding market opportunities.

(c) ASSISTANCE OF OTHER AGENCIES.—

(1) Furnishing of information.—The head of each department or agency of the executive branch of the Government, including any independent agency, is authorized and directed to furnish to the Trade Representative or to the appropriate agency, upon request, such data, reports, and other information as is necessary for the Trade Representative to carry out his functions under this section.

(2) Restrictions on release or use of information.—Nothing in this subsection shall authorize the release of information to, or the use of information by, the Trade Representative in a manner inconsistent with law or any procedure established pursuant thereto.

(3) Personnel and services.—The head of any department, agency, or instrumentality of the United States may detail such personnel and may furnish such services, with or without reimbursement, as the Trade Representative may request to assist in carrying out his functions.

SEC. 301. DETERMINATIONS AND ACTION BY PRESIDENT.

[(a) DETERMINATIONS REQUIRING ACTION.—If the President determines that action by the United States is appropriate—

[(1) to enforce the rights of the United States under any trade agreement; or

[(2) to respond to any act, policy, or practice of a foreign country or instrumentality that—

[(A) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

[(B) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice. Action under this section maybe taken on a nondiscriminatory basis or solely against the products or services of the foreign country or instrumentality involved.]

(a) DETERMINATIONS REQUIRING ACTION.—

(1) IN GENERAL.—If the President determines that action by the United States is appropriate—

(A) to enforce the rights of the United States under any trade agreement; or

(B) to respond to any act, policy, or practice of a foreign country or instrumentality that—

(i) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(ii) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice.

(2) SCOPE OF ACTION.—The President may exercise his authority under this section with respect to any goods or sector—

(A) on a nondiscriminatory basis or solely against the foreign country or instrumentality involved, and

(B) without regard to whether or not such goods or sector were involved in the act, policy, or practice identified under paragraph (1).

(b) OTHER ACTION.—Upon making a determination described in subsection (a), the President, in addition to taking action referred to in such subsection, may—

(1) suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with the foreign country or instrumentality involved; [and]

(2) *notwithstanding any other provision of law,* impose duties or other import restrictions on the [products] *goods* of, and fees or restrictions on the services of, such foreign country or instrumentality for such time as he determines appropriate[.]*; and*

(3) propose legislation where necessary and appropriate to carry out the objectives of subsection (a).

Any legislation proposed under paragraph (3) shall be treated as an implementing bill pursuant to the provisions of section 151, except that, for purposes of section 151(c)(1), no trade agreement shall be required and the day on which the implementing bill is submitted shall be treated as the day on which the trade agreement is sub-

mitted. The President shall notify Congress, and publish notice in the Federal Register, of his intention to propose legislation under paragraph (3) at least 90 days before the implementing bill is submitted.

(c) PRESIDENTIAL PROCEDURES.—

(1) ACTION ON OWN MOTION.—If the President decides to take action under this section and no petition requesting action on the matter involved has been filed under section 302, the President shall publish notice of his determination, including the reasons for the determination in the Federal Register. Unless he determines that expeditious action is required, the President shall provide an opportunity for the presentation of views concerning the taking of such action.

(2) ACTION REQUESTED BY PETITION.—Not later than 21 days after the date on which he receives the recommendation of the Special Representative under section 304 with respect to a petition, the President shall determine what action, if any, he will take under this section, and shall publish notice of his determination, including the reasons for the determination, in the Federal Register.

[(d) SPECIAL PROVISIONS.—

[(1) DEFINITION OF COMMERCE.—For purposes of this section, the term "commerce" includes, but is not limited to, services associated with international trade, whether or not such services are related to specific products.]

(d) DEFINITIONS; SPECIAL RULE FOR VESSEL CONSTRUCTION SUBSIDIES.—For purposes of this section—

(1) DEFINITION OF COMMERCE.—The term "commerce" includes, but is not limited to—

(A) services associated with international trade, whether or not such services are related to specific goods, and

(B) foreign direct investment by United States persons with implications for trade in goods or services.

(2) VESSEL CONSTRUCTION SUBSIDIES.—For purposes of this section an act, policy, or practice of a foreign country or instrumentality that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country or instrumentality of subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States.

(3) DEFINITION OF UNREASONABLE.—The term "unreasonable" means any act, policy, or practice which, while not necessarily in violation of or inconsistent with the international legal rights of the United States, is otherwise deemed to be unfair and inequitable. The term includes, but is not limited to, any act, policy, or practice which denies fair and equitable—

(A) market opportunities;

(B) opportunities for the establishment of an enterprise; or

(C) provision of adequate protection of intellectual property rights.

(4) DEFINITION OF UNJUSTIFIABLE.—

(A) In general.—The term "unjustifiable" means any act, policy, or practice which is in violation of, or inconsistent with, the international legal rights of the United States.

(B) Certain actions included.—The term "unjustifiable" includes, but is not limited to, any act, policy, or practice described in subparagraph (A) which denies national or most-favored-nation treatment, the right of establishment, or protection of intellectual property rights.

(5) DEFINITION OF DISCRIMINATORY.—The term "discriminatory" includes where appropriate any act, policy, or practice which denies national or most-favored-nation treatment to United States goods, services, or investment.

[SEC. 302. PETITIONS OR PRESIDENTIAL ACTION.

[(a) FILING OF PETITION WITH SPECIAL REPRESENTATIVES.—Any interested person may file a petition with the Special Representative for Trade Negotiations (hereinafter in this chapter referred to as the 'Special Representative') requesting the President to take action under section 301 and setting forth the allegations in support of the request. The Special Representative shall review the allegations in the petition and, not later than 45 days after the date on which he received the petition, shall determine whether to initiate an investigation.

[(b) DETERMINATION REGARDING PETITIONS.—

[(1) NEGATIVE DETERMINATION.—If the Special Representative determines not to initiate an investigation with respect to a petition, he shall inform the petitioner of his reasons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

[(2) AFFIRMATIVE DETERMINATION.—If the Special Representative determines to initiate an investigation with respect to a petition, he shall initiate an investigation regarding the issues raised. The Special Representative shall publish the text of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a public hearing—

[(A) within the 30-day period after the date of the determination (or on a date after such period if agreed to by the petitioner), if a public hearing within such period is requested in the petition; or

[(B) at such other time if a timely request therefor is made by the petitioner.]

SEC. 302. INITIATION OF INVESTIGATIONS BY UNITED STATES TRADE REPRESENTATIVE.

(a) FILING OF PETITION.—

(1) IN GENERAL.—Any interested person may file a petition, with the United States Trade Representative (hereinafter in this chapter referred to as the "Trade Representative") requesting the President to take action under section 301 and setting forth the allegations in support of the request.

(2) REVIEW OF ALLEGATIONS.—The Trade Representative shall review the allegations in the petition and, not later than 45 days after the date on which he received the petition, shall determine whether to initiate an investigation.

(b) DETERMINATIONS REGARDING PETITIONS.—

(1) NEGATIVE DETERMINATION.—If the Trade Representative determines not to initiate an investigation with respect to a petition, he shall inform the petitioner of the reasons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

(2) AFFIRMATIVE DETERMINATION.—If the Trade Representative determines to initiate an investigation with respect to a petition, he shall initiate an investigation regarding the issues raised. The Trade Representative shall publish a summary of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a public hearing—

(A) within the 30-day period after the date of the determination (or on a date after such period if agreed to by the petitioner) if a public hearing within such period is requested in the petition; or

(B) at such other time if a timely request therefor is made by the petitioner.

(c) DETERMINATION TO INITIATE BY MOTION OF TRADE REPPRESENTATIVE.—

(1) DETERMINATION TO INITIATE.—If the Trade Representative determines with respect to any matter that an investigation should be initiated in order to advise the President concerning the exercise of the President's authority under section 301, the Trade Representative shall publish such determination in the Federal Register and such determination shall be treated as an affirmative determination under subsection (b)(2).

(2) CONSULTATION BEFORE INITIATION.—The Trade Representative shall, before making any determination under paragraph (1), consult with appropriate committees established pursuant to section 135.

SEC. 303. CONSULTATION UPON INITIATION OF INVESTIGATION.

(a) IN GENERAL.—On the date an affirmative determination is made under section 302(b) [with respect to a petition,] the Special Representative, on behalf of the United States, shall request consultations with the foreign country or instrumentality concerned regarding issues raised in the petition *or the determination of the Trade Representative under section 302(c)(1)*. If the case involves a trade agreement and a mutually acceptable resolution is not reached during the consultation period, if any, specified in the trade agreement, the Special Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement. The Special Representative shall seek information and advice from the petitioner (*if any*) and the appropriate [private sector] representatives provided for under section 135 in preparing

United States presentations for consultations and dispute settlement proceedings.

(b) DELAY OF REQUEST FOR CONSULTATIONS FOR UP TO 90 DAYS—

(1) IN GENERAL.—Notwithstanding the provisions of subsection (a)—

(A) the United States Trade Representative may delay for up to 90 days any request for consultations under subsection (a) for the purpose of verifying or improving the petition to ensure an adequate basis for consultation, and

(B) if such consultations are delayed by reason of subparagraph (A), each time limitation under section 304 shall be extended for the period of such delay.

(2) NOTICE AND REPORT.—The Trade Representative shall—

(A) publish notice of any delay under paragraph (1) in the Federal Register, and

(B) report to Congress on the reasons for such delay in the report required by section 306.

SEC. 304. RECOMMENDATIONS BY THE SPECIAL REPRESENTATIVE.

(a) RECOMMENDATIONS.—

(1) IN GENERAL.—On the basis of the investigation under section 302, and the consultations (and the proceedings, if applicable) under section 303, and subject to subsection (b), the Special Representative shall recommend to the President what action, if any, he should take under section 301 with respect to the [issues raised in the petition] *matters under investigation.* The Special Representative shall make that recommendation not later than—

(A) 7 months after the date of the initiation of the investigation under section 302(b)(2) if the petition alleges only an export subsidy covered by the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures and hereinafter referred to in this section as the "Subsidies Agreement");

(B) 8 months after the date of the investigation initiation if the petition alleges any matter covered by the Subsidies Agreement other than only an export subsidy;

(C) in the case of a petition involving a trade agreement approved under section 2(a) of the Trade Agreements Act of 1979 (other than the Subsidies Agreement), 30 days after the dispute settlement procedure is concluded; or

(D) 12 months after the date of the investigation initiation in any case not described in subparagraph (A), (B), or (C).

(2) SPECIAL RULE.—In the case of any petition—

(A) an investigation with respect to which is initiated on or after the date of the enactment of the Trade Agreements Act of 1979 (including any petition treated under section 903 of that Act as initiated on such date); and

(B) to which the 12-month time limitation set forth in subparagraph (D) of paragraph (1) would but for this paragraph apply;

if a trade agreement approved under section 2(a) of such Act of 1979 that relates to any allegation made in the petition applies between the United States and a foreign country or instrumentality before the 12-month period referred to in subparagraph (B) expires, the Special Representative shall make the recommendation required under paragraph (1) with respect to the petition not later than the close of the period specified in subparagraph (A), (B), or (C), as appropriate, of such paragraph, and for purposes of such subparagraph (A) or (B), the date of the application of such trade agreement between the United States and the foreign country or instrumentality concerned shall be treated as the date on which the investigation with respect to such petition was initiated; except that consultations and proceedings under section 303 need not be undertaken within the period specified in such subparagraph (A), (B), or (C), as the case may be, to the extent that the requirements under such section were complied with before such period begins.

(3) REPORT IF SETTLEMENT DELAYED.—In any case in which a dispute is not resolved before the close of the minimum dispute settlement period provided for in a trade agreement referred to in paragraph (1)(C) (other than the Subsidies Agreement), the Special Representative, within 15 days after the close of such period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum period, the status of the case at the close of the period, and the prospects for resolution. For purposes of this paragraph, the minimum dispute settlement period provided for under any such trade agreement is the total period of time that results if all stages of the formal dispute settlement procedures are carried out within the time limitations specified in the agreement, but computed without regard to any extension authorized under the agreement of any stage.

(b) CONSULTATION BEFORE RECOMMENDATION.—Before recommending that the President take action under section 301 with respect to the treatment of any product or service of a foreign country or instrumentality which is the subject of a petition filed under section 302, the Special Representative, unless he determines that expeditious action is required—

(1) shall provide opportunity for the presentation of views, including a public hearing if requested by any interested person;

(2) shall obtain advice from the appropriate [private sector] advisory representatives provided for under section 135; and

(3) may request the views of the International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to such product or service.

If the Special Representative does not comply with paragraphs (1) and (2) because expeditious action is required, he shall, after making the recommendations concerned to the President, comply with such paragraphs.

SEC. 305. REQUESTS FOR INFORMATION.

(a) IN GENERAL.—Upon receipt of written request therefor from any person, the Special Representative shall make available to that person information (other than that to which confidentiality applies) concerning—

(1) the nature and extent of a specific trade policy or practice of a foreign government or instrumentality with respect to particular merchandise, to the extent that such information is available to the Special Representative or other Federal agencies;

(2) United States rights under any trade agreement and the remedies which may be available under that agreement and under the laws of the United States; and

(3) past and present domestic and international proceedings or actions with respect to the policy or practice concerned.

(b) IF INFORMATION NOT AVAILABLE.—If information that is requested by an interested party under subsection (a) is not available to the Special Representative or other Federal agencies, the Special Representative shall, within 30 days after receipt of the request—

(1) request the information from the foreign government; or

(2) decline request the information and inform the person in writing of the reasons for the refusal.

(c) CERTAIN BUSINESS INFORMATION NOT MADE AVAILABLE.—

(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding any other provision of law (including section 552 of title 5, United States Code), no information requested and received by the Trade Representative in aid of any investigation under this chapter shall be made available to any person if—

(A) the person providing such information certifies that—

(i) such information is business confidential,

(ii) the disclosure of such information would endanger trade secrets or profitability, and

(iii) such information is not generally available;

(B) the Trade Representative determines that such certification is well-founded; and

(C) to the extent required in regulations prescribed by the Trade Representative, the person providing such information provides an adequate nonconfidential summary of such information.

(2) USE OF INFORMATION.—The Trade Representative may—

(A) use such information, or make such information available (in his own discretion) to any employee of the Federal Government for use, in any investigation under this chapter, or

(B) may make such information available to any other person in a form which cannot be associated with, or otherwise identify, the person providing the information.

○